CF0000059562

(2)

Division Bench (Criminal)

IN THE HIGH COURT OF JUDICATURE AT JABALPUR M.P.

CRIMINAL APPEAL NO. 3037 OF 1998.

APPEAL UNDER SECTION 374(II) OF Cr.P.C.

APPELLANT : (IN JAIL)

HEERA DAS NARANG,
Son of Ramlal Narang, aged about 50 years resident of village - Beltukuri, P.S.Kharora District Raipur (M.P.).

- v e r s u s -

RESPONDENT : THE STATE OF MADHYA PRADESH.

CONVICTION	SENTENCE
U/S 302 I.P.C.	Life Imprisonment + 1000/-fine indefault of fine R.I. for 6 months .

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Filed on 16.12.98
by Shri Suresh Kumar
Advocate

Rs. A.R.

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HIGH COURT OF CHHATTISGARH : BILASPUR

CRIMINAL APPEAL NO. 3037 OF 1998

Heera Das Narang

Vs.

State of Madhya Pradesh
(Now Chhattisgarh)

JUDGMENT FOR CONSIDERATION

Sd/-
Fakhruddin
Judge

Hon'ble Shri Justice V.K. Shrivastava

I do agree

Sd/-
V.K. Shrivatava
Judge

post for 21-6-2006
Sd/-
Fakhruddin
Judge
21-6-2006

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HIGH COURT OF CHHATTISGARH AT BILASPUR

Criminal Appeal NO. 3037/1998

Heera Das Narang

Vs.

State of Madhya Pradesh
(Now Chhattisgarh)

Coram: **Hon'ble Shri Fakhruddin and**
Hon'ble Shri V.K.Shrivastava,JJ

Present: Ku. Sangeeta Mishra, counsel for the appellant.

Shri U.N.S. Deo, Govt. Advocate/Addl. Public Prosecutor with Shri Akhil Mishra, Panel Lawyer, for the State.

J U D G M E N T

Per Fakhruddin,J.

Heard learned counsel for the parties.

2. The appellant has preferred this appeal against the judgment dated 5-10-1998 delivered in Sessions Trial No.305/97 by the Additional Sessions Judge (Special Judge N.D.P.S.) Raipur whereby he has been convicted under Section 302 of the Indian Penal Code for committing murder of his wife Sonvati in the night of 20th June 1997 in Village Beltukari, P.S. Kharora and sentenced to undergo imprisonment for life and a fine of Rs.1,000/-, in default of payment of fine to further undergo rigorous imprisonment for six months.

3. Briefly stated the prosecution story is that Sonvati was wife of the appellant. In the intervening night of 20th and 21st June, 1997, deceased Sonvati and the appellant were in one room and the son of deceased Yogesh Narang (P.W. 1) and his wife Punni Bai (P.W. 9) along with their children were sleeping in the adjoining room of the house. House of brother of the accused P.W. 2 Sondas is adjoining to the house

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of the accused. At about 2 a.m. Yogesh Narang (P.W.1) heard the scream of his mother. He woke up and saw that his father accused Heeradas was beating Sonvati by Tangia and she was crying for help. When Yogesh Narang (P.W.1) tried to stop the accused, accused asked him that if he would not go, he will kill him also. Upon this, Yogesh Narang (P.W. 1) went inside his room and called his uncle Sondas (P.W. 2) and informed him about the incident. Thereafter Yogesh Narang (P.W. 1) along with his wife and children went to the house of his uncle Sondas (P.W. 2) and then went to Village Kotwar Hiru Das (P.W.7), Patel Hariram (P.W. 3), Naindas (P.W. 4) and Babulal (P.W. 5) and other villagers and informed them about the incident. All these persons came and since the front door was closed from inside, they entered into the house of accused from the house of Sondas (P.W. 2). They saw that door of the room of the accused was opened and blood was found spread in and out side the room and Sonvati was lying drenched with blood in the cot and the accused was also in the cot.

4. Yogesh Narang (P.W. 1) could not lodge the report in the night due to rain and in the morning at 6.10 A.M. he went to Police Station Kharora which is 7.00 km. away from Village Beltukari and informed Sub Inspector Albert Kujur (P.W. 13) that his father has killed his mother by use of Tangia. He lodged First Information Report as per Ex. P-1, on the basis of which an offence under Section 302 of I.P.C. was registered. Investigating Officer Albert Kujur (P.W. 13) then came to spot and prepared Panchnama. He recorded statements of Hariram (P.W. 3), Naindas (P.W. 4), Babulal, Kotwar Hirudas (P.W. 7) and Punni Bai (P.W. 9). The body was sent to Primary Health Centre, Kharora for postmortem, where Dr. Verma (P.W. 8) found multiple injuries on the body of the deceased. Thereafter, challan was filed and charges were

framed against the accused. The accused abjured the guilt and contended that he has been falsely implicated. The learned trial Court after considering the evidence and material on record held the accused guilty for the offence punishable under Section 302 of I.P.C. and sentenced him as above.

5. Ku. Sangeeta Mishra, learned counsel for the appellant, assailed the findings recorded by the learned Court below interalia on the ground that Yogesh Narang (P.W. 1) and Punni Bai (P.W. 9) are hostile witnesses and the learned trial Court committed illegality in relying upon them. She further contended that report of Serologist has not been filed. She also contended that blood found on the body of the deceased has not been confirmed.

6. Learned State Counsel on the other hand supported the judgment and the finding of the trial court.

7. We have gone through the record minutely. The prosecution examined 14 witnesses, namely, Yogesh Narang (P.W.1), Sondas (P.W.2), Hariram (P.W.3), Naindas (P.W.4), Babulal (P.W.5), Chandra Kumar (P.W.6), Hirudas (P.W.7), Dr. D.R. Verma (P.W.8), Punni Bai (P.W.9), Anil Kumar Sahu (P.W.10), Teksingh Rajpoot (P.W.11), Jaganlal (P.W.12), Albert Kujur (P.W.13) & Holkar Singh Thakur (P.W.14). We have read the evidence of Yogesh Narang (P.W.1). He has categorically stated that he along with his wife Punni Bai was sleeping in one room and accused Heera Das and his mother were sleeping in another room of the house. House of his uncle Sondas is adjacent to his house. In the mid night, he heard the scream of his mother Sonvati. Upon this, he woke up and came out. Scream of his mother was coming from the room where his father and mother were there. The door was closed. He

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tried to get opened the door but it could not be opened. He went to the house of his uncle Sondas jumping the wall and called Kotwar Hirudas, Devkaran, Babulal, Hariram, Naindas and Daulal. He and his uncle along with other persons entered in the house. He saw that his father Heeradas and mother Sonvati were in the room on the same cot. Thereafter, this witness was declared hostile.

8. Similar is the version of Puñni Bai (P.W. 9) who is daughter-in-law of accused. She has stated in para 2 that in the night she was awakened by her husband. She went to house of Sondas as his husband heard the sound of quarrel between her father-in-law and mother-in-law who were there in the next room. Then she said that her husband and brother of father-in-law called villagers and they came to see her father-in-law and mother-in-law. She did not enter into their room. She further stated that she did not see that who is beating whom. At this stage, the prosecution declared Punni Bai (P.W.9) hostile.

9. Sondas (P.W. 2) is the real brother of the accused/appellant. His house is adjacent to the house of accused. He stated that appellant Heera Das and his wife were living in one room and his son Yogesh and his wife and children were living in another room of the same house. He further stated that at about 2.30 hrs in the night, Yogesh Narang awakened him and on being asked, he told that his father and mother were quarrelling. He also stated that Yogesh told him that he tried to pacify them but he could not do that. He advised Yogesh to call the villagers. Yogesh told him about the *marpeet* between mother and father. He did not tell that who is beating whom. He along with Yogesh, Hariram, Daulal, Babulal, Devkaran etc. came to the house of accused. Since the front door of the house was not opened, they entered from back side. They found that blood was spreading in the

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Parchhi. Door of the room of Heeradas was opened and the deceased and Heeradas were lying there on a cot. When he saw on the light of torch, he found that there was blood in the room. They called Sonvati and Heeradas but they did not reply. Blood was oozing from the body of Sonvati. He alongwith Yogesh Narang and Kotwar Heerudas went to police station Kharora at about 7.00-8.00 hrs. and Yogesh lodged the report. This witness was cross-examined. He stated that Yogesh came to him and told that his mother and father were quarrelling. In Para 4 of his cross examination, a suggestion was given that his brother was of unsound mind, but he denied that Heeradas was of unsound mind.

10. Hari Ram (P.W. 3) is another person who accompanied immediately along with P.W. 1 and P.W. 2 and other villagers. He is the witness of seizure of Tangia and its handle, lungi and Gamchha. Naindas (P.W. 4) and Babulal (P.W. 5) have also stated so in their statements. Babulal (P.W. 5) has stated that Yogesh and Bhauram came to call him. Yogesh told that his father was beating his mother. Daulal, Naindas, Hariram, Devkaran and he himself and Sondas and Yogesh entered into the room of Heeradas and saw that blood was found spread in the *Parchhi* and Heeradas and his wife was lying on a cot. They called them but they did not reply.

11. Dr. D.R. Verma (P.W. 8) is the person who conducted autopsy and found 5 injuries on the body of the deceased, namely, (i) incised wound pierced into soft tissue at left side of neck, below mandible in between chin and left ear measuring 3" length x 1" breadth x 2" depth, big vessels cut; (ii) incised wound over scalp on left temporo parietal region 3 cm x 1 cm, skin deep; (iii) incised wound 1" x 1" on right side of neck; (iv) cut off bones and soft tissue of right forearm at level of junction of lower one third and middle two third; and (v) fracture over left forearm

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at junction of lower one third and upper two third. Dr. Verma opined that deceased died due to excessive haemorrhage as a result of multiple injuries and blood vessels cut. Mode of death was homicidal in nature.

12. One of the pleas which was raised in the cross-examination of P.W. 1 Yogesh Narang- son of the appellant is that the appellant was not of sound mind. He denied the suggestion that because of mental condition, he used to quarrel with anybody; however it is correct that he escaped from house. This question was not put to P.W. 9 Punni Bai. Brother Sondas has categorically stated that accused was not of unsound mind. There is nothing on record that he was insane at the time of occurrence. Learned trial Judge has considered the aspect in Para 22 of the judgment about the plea of insanity. One of the arguments was that because the accused had seen some person with his wife in compromising condition and as such he killed her. The other argument was that his mental condition was not good. In this regard, the evidence of brother of the accused demolishes the plea that he was of unsound mind. He has stated that accused was not at all insane. The trial Court has observed that from the beginning of the trial, the behaviour of the accused remained normal and he has answered the question properly after understanding them. This court has also gone through the questions put to him and answer given by the accused under Section 313 Cr.P.C.

13. So far as question of insanity is concerned, we are satisfied that the finding recorded by the learned trial Judge that the accused was of sound mind is justified on the facts and circumstances of the case and material on record. In this regard, testimony of P.W. 2 Sondas is material, who is real brother of the accused and stated that he was of sound mind. The Hon'ble Supreme Court in the case of Shrikant

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Anandrao Bhosale –v- State of Maharashtra reported in (2002)7 SCC 748 has dealt with the matter and in para 13 of the judgment has held that the burden to prove that the appellant was of unsound mind and as a result thereof he was incapable of knowing the consequences of his acts is on the defence. Section 84 I.P.C. is one of the provisions in Chapter IV of IPC which deals with "general exceptions". That section provides that nothing is an offence which is done by a person who, at the time of doing it, by reason of unsoundness of mind, is incapable of knowing the nature of the act, or that he is doing what is either wrong or contrary to law. The burden of proving the existence of circumstances bringing the case within the purview of Section 84 IPC lies upon the accused under Section 105 of the Indian Evidence Act. In the present case, there is nothing on record to show that the accused/appellant was of unsound mind and no material in this regard has been produced.

14. So far as contention advanced by the learned counsel for the appellant that reliance ought not to have been placed on the evidence of P.W. 1 Yogesh Narang and P.W. 9 Punni Bai is concerned, in our opinion, the Court below has rightly relied upon the evidence. Though they have been declared hostile, both of them have said that the accused and the deceased were sleeping in the same room. P.W. 1 also told his uncle that he tried to pacify the accused. We are also fortified by the judgment of the Hon'ble Supreme Court in the case of Radha Mohan Singh alias Lal Saheb and others –v- State of U.P. reported in 2006 Cri.L.J. 1121. It has been held in para 7 of that case that it is well settled that the evidence of a prosecution witness cannot be rejected in toto merely because prosecution chose to treat him as hostile and cross-examined him. The evidence of such washed off the record

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altogether but the same can be accepted to the extent that his version is found to be dependable on a careful scrutiny thereof. The matter has also been dealt with in the cases of Bhagwan Singh v. State of Haryana (AIR 1976 SC 202); Rabinder Kumar Dey v. State of Orissa (AIR 1977 SC 170), Syed Akbar v. State of Karnataka (AIR 1979 SC 1848) and Khujji @ Surendra Tiwari v. State of Madhya Pradesh (AIR 1991 SC 1853).

15. The learned Court below in paragraph 20 of its judgment summed up the chain of 9 circumstances and elaborately discussed them. They are as under:-

(i) The accused was present in the room along with his wife in the night of occurrence.

(ii) There is nothing on record to suggest that in that night any person other than the accused had entered into the room. The appellant also in his statement under Section 313 of Cr.P.C. has not explained any circumstance that anybody else had entered into the room.

(iii) In the night of occurrence, Sonvati cried for help from the room where she was present along with accused and her son Yogesh Narang (P.W. 1) heard her cries.

(iv) Hearing the cries of Sonvati, Yogesh Narang (P.W. 1) jumping the wall went to the house of his uncle Sondas (P.W. 2) and informed that there was a *Marpeet* and quarrel taking place between the accused and his mother.

(v) After hearing the cries of Sonvati, Yogesh Narang (P.W. 1) along with his uncle Sondas (P.W. 2) and other villagers entered

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into the room of the accused and found that there was blood in the room and accused was in the room and Sonvati was lying on a cot drenched with blood.

(vi) On calling of the persons, the accused did not give any reply from inside his room nor he said anything to them.

(vii) On the very next day, blood stained Tangia was recovered from the room of accused and the injuries found on the body of the deceased were also caused by a sharp-edged weapon like Tangia.

(viii) Cause of death of Sonvati was the injuries on neck, hands and body inflicted by a sharp-edged weapon and bleeding therefrom.

(ix) Appellant's son Yogesh Narang (P.W.1) lodged F.I.R. against the accused by name in the police station.

16. Having considered the facts and circumstances of the case and material on record and in view of the evidence of record, which has been relied upon by the trial Court and discussed hereinabove and further the fact that the chain of circumstances are fully proved beyond doubt, we are of the considered opinion that the finding, conviction and sentence passed by the trial Court do not suffer from any infirmity, which may call for any interference by this Court in its appellate jurisdiction

17. The appeal fails and is dismissed.

Sd/-
Fakhruddin
Judge
21-6-2006

Sd/-
V.K. Shrivatava
Judge
21/6/2006

P/H-